

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER:  
International Fuel Tax Agreement (IFTA) 98-0631  
For Years 1996 AND 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES****I. IFTA – Responsible Party for Taxes**

The taxpayer protested the auditor's assessment made based on taxpayer's business activities in the first two quarters of 1996.

**II. IFTA – Credit for payments by receipts**

**Authority:** IFTA II; IFTA XIII

The taxpayer requesting credit for taxes paid at the point of fuel purchased by predecessor corporation.

**III. IFTA – Waiver of Negligence Penalty**

**Authority:** 45 IAC 15-11-2; IC § 6-8.1-10

The taxpayer protested the assessment of a negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a corporation operating multiple vehicles engaged in interstate transportation. Taxpayer corporation was formed by an officer of, and with equipment leased or obtained from, a predecessor corporation. Predecessor corporation has a substantial current IFTA liability. While the vehicles were in operation for the first two quarters of 1996, the records were not clear as to which of the two corporations was responsible for the fuel tax payments, taxpayer was assessed tax based on its filing of returns for these periods.

Subsequently, taxpayer corporation took responsibility for the operation of the vehicles. The drivers of these vehicles continued to use credit cards issued to the predecessor corporation for fuel payments. When the bills were forwarded to the taxpayer corporation with the predecessor corporation name, the taxpayer corporation paid the balance from the taxpayer corporation checking account.

**I. IFTA – Responsible Party for Taxes**

**DISCUSSION**

Taxpayer withdraws their protest.

**FINDINGS**

Taxpayer corporation withdraws protest and assumes responsibility for the tax subject to offset by any relevant tax payments.

**II. IFTA – Credit for payments by receipts**

**DISCUSSION**

Taxpayer has provided documentation for the transactions in question showing the credit card billing in the predecessor corporation's name with a cancelled check to confirm the corresponding payment by the taxpayer corporation. Taxpayer is requesting these payments be credited to their tax liability.

IFTA II states in relevant parts:

(A) Receipt Documentation

In order for the licensee to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt automated vendor generated invoice or transaction listing must be retained by the licensee showing evidence of such purchases and tax having been paid....

(B) Receipt Content

1. An acceptable receipt or invoice for tax paid purchases taken as credit must include, but not be limited to, the following:

....

g. Purchaser's name (in the case of a lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party).

Taxpayer does not cite any IFTA regulation supporting this request, nor has the taxpayer provided any grant of authority or lease arrangement with the predecessor corporation supporting this request. Absent evidence of an agreement between the two corporations for this transfer the Department has no authority to grant credit to taxpayer corporation for these purchases.

Assuming, in arguendo, that predecessor corporation granted the authority for the transfer, IFTA XIII requires

....

(C) As a condition to issuance of a motor fuel tax license under this Agreement, an applicant will authorize on the application that refunds may be withheld if the licensee is delinquent on fuel use taxes due to any member jurisdiction.

(D) Credits may be refunded to the licensee only if all motor fuel taxes, penalty, and interest governed by this Agreement due every other member jurisdiction have been paid, unless the unpaid amount is under proper appeal procedures.

Essentially, any payments made by the predecessor corporation (via its line of credit) that could be credited to the taxpayer corporation by transfer from the predecessor corporation cannot be transferred due to the substantial outstanding IFTA liability by predecessor corporation.

### **FINDINGS**

Taxpayer protest denied.

### **III. IFTA – Waiver of Negligence Penalty**

### **DISCUSSION**

Taxpayer requests waiver of the negligence penalty on the grounds that there was no intent to avoid taxes. A penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10 The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay

a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. In this instance, as was noted by the auditor, the taxpayer was negligent in record keeping. The taxpayer did not have fuel summaries or mileage summaries by vehicle. The taxpayer could not reproduce records showing the reported miles, and gallons. Legs of trips were not included in the reported miles. Miles were reported for states in which the vehicles did not travel, and the January and February 1996 mileage was not reported. These activities constitute a failure to exercise "ordinary business care and prudence." The imposition of the negligence penalty was appropriate in these circumstances.

#### **FINDINGS**

Taxpayer protest denied.